

Risk assessment

A brief guide to putting it all together so it meets the standard 'suitable and sufficient', includes stress factors and involves safety representatives

There are statutory obligations on employers to not only ensure the workplace is safe and without risks to health, but also on the means they must employ to comply with those obligations. The general duties to ensure a safe workplace without risk to health are under Section 2 of the Health and Safety at Work Act 1974, (from <http://www.legislation.gov.uk/ukpga/1974/37/contents>) while the Management of Health & Safety at Work Regulations 1999 set out what an employer must do to manage the health, safety & welfare of employees, and anyone else that might be affected by their activities.

Risk assessment

There is an absolute duty on employers to '*conduct suitable and sufficient risk assessments*' in the workplace, under Regulation 3 of the Management of Health & Safety at Work Regulations. HSE guidance tells employers they need to identify potential hazards that may affect the health or safety of employees, and that a suitable and sufficient risk assessment must be conducted '**before** you do work which presents a risk of injury or ill health'. See HSE at: <http://www.hse.gov.uk/risk/faq.htm#q3>

A hazard is something that has the potential to cause harm. Hazards can be created by articles, materials and substances, plant and machinery, the working environment, working methods and the organisation and management of the work.

Suitable and sufficient means that:

- the assessment has identified all significant hazards, and everyone who might be harmed by them
- the level of risk the hazards pose to health & safety have been correctly evaluated
- suitable measures have been put in place to either eliminate or manage the hazards to a level that no longer causes harm, and are in accordance with the hierarchy of controls set out in the schedule to the regulations, and
- the main points have been recorded.

Since the HSE withdrew the publication L21, the Approved Code of Practice (ACoP) and Guidance to the Management Regulations in 2014, only the Regulations themselves are

now available at:

<http://www.legislation.gov.uk/ukxi/1999/3242/contents/made>

HSE now only provides guidance at:

<http://www.hse.gov.uk/risk/controlling-risks.htm> and with HSG65 Managing for Health and Safety at <http://www.hse.gov.uk/pubns/books/hsg65.htm> and HSG 218 Managing the causes of work-related stress at:

<http://www.hse.gov.uk/pubns/books/hsg218.htm>

Withdrawal of the management regulations ACoP is a significant weakening of the statutory framework because employers must do what an ACoP requires, but can choose to ignore guidance, provided that what they do instead enables them to meet the statutory duty.

Employer duties under the management regulations

- **Regulation 3** requires employers to conduct a *suitable and sufficient risk assessment* to identify workplace hazards and those who might be affected by them, and calculate the degree of risk they present in order to put in place the measures they need to take to protect people. The main points must be recorded where there are more than 5 employees. An HSE Inspector will use the record to judge if the assessment has met the legal standard. The assessment must be reviewed if there is reason to suspect it is no longer valid; for example when there has been an incident that caused, or almost caused harm, or when the organisation of the work or content of the job has changed.

Where young people are concerned (either workers under 18, or children or young persons under 18 on work experience) the employer must take their inexperience, immaturity, lack of awareness of risk and other factors into account when undertaking the assessment. (See Regulation 19 below)

Where there are women of child-bearing age in the workplace, that fact must be taken into account when making the assessment (See Regulation 16 below)

- **Information for workers: Regulation 10** requires the employer to inform the employees to whom the assessment relates about the risks identified, what has been done to protect them, and how to work safely. That may involve both information and training. Where children are in the workplace (children are people under the normal school leaving age), the employer must also give their **parents** information about the risks identified and the protective measures in place. There is no requirement for this information to be in writing.

Other management regulations linked to risk assessment:

- **Adopt the hierarchy of control approach: Regulation 4 & the Schedule** require employers to adopt a hierarchical approach to controlling risks: remove risks at source;

adapt work to the individual; adapt to technical progress; replace the dangerous with the non or less dangerous; develop an overall prevention policy which includes the organisation of work and social relationships, and to prioritise collective protective measures over individual.

- **Risk assessors must be competent: Regulation 7** requires the employer to appoint competent persons to help them achieve their statutory duties and obligations, one of which is risk assessment. Competent people must have appropriate experience, understanding, knowledge and training, and possibly qualifications. See what the HSE says about competence here: <http://www.hse.gov.uk/competence/>
- **Take joint responsibility with contractors on site: Regulation 12** requires the host employer and any contracting employer to co-operate & share information, and be jointly responsible. In prosecutions in 2009 and 2010, both Lincoln FE college and a window cleaning contractor they employed were convicted of health and safety offences in relation to an incident in which one of the contractor's employees fell from a ladder and was seriously injured. The HSE inspector who prosecuted both the window cleaner's employer and the college said 'Employers and organisations that hire contract staff have a joint responsibility to ensure the safety of all staff who work on site, to avoid serious incidents such as this'. For more detail see: <http://www.hse.gov.uk/press/2010/coi-em-0810.htm>
- **Women of child-bearing age: Regulation 16** requires the assessment to take account of any women of childbearing age in the workplace, to identify any factors in the work that might pose a risk to a mother or her baby. This is **not** a requirement to conduct a special risk assessment when a woman informs the employer she is pregnant, but to take her child-bearing capacity into account when conducting the original assessment.
- **Young people: Regulation 19** requires employers to ensure young people (those under 18 years of age) in the workplace are protected from risks as a consequence of their inexperience or lack of awareness of risk because of their immaturity.

Duties imposed on workers by the management regulations:

- **Regulation 14** requires an employee to inform the employer of any circumstances where they reasonably consider there is a serious and immediate danger to health & safety; or where they reasonably consider there is a shortcoming in the employer's protective arrangements. Where an employee makes such a complaint to their employer, they are protected against detriment or dismissal by Sections 44 and 100 of the Employment Rights Act 1996. Health and safety reps are similarly protected by those sections.

Safety representatives interventions on risk assessment

Employers have no option but to use risk assessment as the primary tool for identifying and controlling hazards and risks in the workplace; it's what the law requires. This makes risk assessment something that has a substantial impact on the health, safety and welfare of employees and that means safety representatives must be consulted in the process of risk assessment right from the start. The Safety Representatives & Safety Committees Regulations (SRSCR) ensure a number of intervention points:

Regulation 4A requires employers to consult with safety reps, in good time, on a wide range of matters, all of which relate to aspects of risk assessment:

- a. any matter that has a substantial effect on health and safety of employees. As an absolute requirement on employers, risk assessment is automatically such a matter
- b. the appointment of competent persons who assist the employer to meet all their statutory duties: risk assessments must be conducted by competent persons
- c. the information required to be given to employees about the findings of the assessment
- d. any training needs that arise from changing working practices to protect workers' health and safety
- e. the introduction of any new technology – we interpret that to include changes in the way work is managed and organised, as these factors are included as part of the general principles of prevention in the schedule to the management regulations.

All five of these intervention opportunities are directly related to risk assessment, but UCU health and safety representatives often complain they have not been involved in any risk assessment process.

Regulation 4A(2) requires the employer to give health & safety reps any assistance and facilities they reasonably require in order to undertake their functions. The same duty on employers is also part of Regulations 5 and 6 which deal with regular inspections of the workplace and incident investigation. When investigating any health and safety issue in the workplace, conducting a regular workplace inspection or investigating an incident, UCU safety reps should require the employer to provide a copy of all relevant risk assessment records as essential information. This duty is further detailed in Regulation 7(1).

Regulation 7(1) requires the employer to give safety reps access to, and a copy of any document related to the health and safety of employees that the law requires them to keep, if they request it. The record of the main points of a risk assessment is such a document. Records of risk assessments are essential documents for health and safety representatives to have, so they should always be requested.

Regulation 7(2) requires employers to give health and safety reps any information within their knowledge necessary to enable them to fulfil their functions – that's automatic, not

dependent on a request.

Health and safety representatives need to ensure they take full advantage of all the regulatory provisions imposed on employers that relate to risk assessment. Our role is to be constructively critical of assessments to ensure all hazards are identified, that levels of risk are assessed realistically, and that the control measures proposed meet the hierarchy of control approach, and are suitable and effective. That's a real contribution to improving the quality of the assessments.

Stress factors and the employer's duty to assess risk

The hazards of work are not just tangible physical, environmental or process risks; some of the hazards to be identified by the assessment will be what the HSE has called 'psychosocial hazards' - factors that have the possibility of causing a stress-related reaction and consequent ill-health. In 2003, assisted by academic experts and occupational psychologists, HSE developed a set of management standards (SMS) for occupational stress, and identified 6 major headings under which stress factors at work are grouped: demands; control; support; relationships; role and change. Linked to the standards is a risk assessment toolkit specifically to help employers conduct risk assessments and identify problem areas. See 'How to tackle work-related stress: a guide for employers' for information on the stress management standards.

<http://www.hse.gov.uk/pubns/indg430.pdf>

The HSE toolkit contains:

- advice about why employers need to assess the risks arising from work-related stress, including the business and moral case for eliminating stress, as well as the legal duty on them
- advice on how to set-up a steering group to manage the process
- an employee questionnaire and pre-programmed analysis spreadsheet that produces the survey results
- advice about organising focus groups to add further information into the process
- encouragement to involve employee representatives

In 2006-07, to encourage employers to use this toolkit HSE organised a national programme of free, one-day workshops for senior managers in both FE and HE institutions. The workshops emphasised the duty to undertake these assessments, gave guidance on using the toolkit, and offered further HSE assistance if employers requested it. Participants were told HSE Inspectors would be more active in enforcing this duty in future. Follow-up 'master classes' were arranged to look at specific details for those who wanted them.

See <http://www.hse.gov.uk/stress/standards/index.htm> for general information about work-related stress, and for the toolkit:

<http://www.hse.gov.uk/stress/standards/downloads.htm>

Most trade unions produce guidance on stress risk assessment for reps – the University & College Union stress toolkit is available at: <http://www.ucu.org.uk/stress>

Guidance, not compulsory

The HSE toolkit is a general indicative tool to enable employers to develop an overview of problems in the workplace, and shows where action needs to be taken to eliminate or reduce risk, or indicate where further investigation is needed. As guidance, there is no compulsion on employers to use it as there would be if it were an approved code of practice or prescribed under regulation. Even if they don't use the toolkit, employers must still undertake suitable and sufficient risk assessments for hazards in the workplace that cause stress-reactions and consequent ill-health. Given its status as a risk assessment tool specifically produced to assist employers to conduct assessments, UCU recommends that branches and LA's insist that the employer uses it as part of the risk assessment process.

Some UCU branches have reported that their employer maintains that they don't have to undertake a risk assessment for stress factors until someone has been harmed; but that's not the case. Employers must treat psychosocial risks in exactly the same way as other risks; they wouldn't wait until someone had amputated their hand on a circular saw before undertaking a risk assessment, for example. In 2009, one employer in our sector was issued with an Improvement Notice by HSE for failing to undertake a suitable and sufficient risk assessment for stress factors.

http://www.hse.gov.uk/noticeshistory/notices/Notice_details.asp?SF=CN&SV=301840356

HSE issued guidance to its Inspectors on a limited range of enforcement options in relation to workplace stress.

(<http://www.hse.gov.uk/foi/internalops/fod/inspect/stress.pdf>) One former long-serving employee representative on the tripartite HSE board is critical of HSE performance on stress. See: <http://www.hazards.org/stress/distressingfailure.htm>

HSE and the effectiveness of stress management standards

To attempt to evaluate the impact of the Stress Management Standards and related toolkit, for the 6 years from 2004 – 2010, HSE Statistics Branch produced a report on Psychosocial Working Conditions in Britain. The results of their surveys showed little improvement, and the 2010 survey was the last. The summary of the 2010 report said:

'After an initial decrease in the early years of the survey, employees reporting that their job is very or extremely stressful have returned to 2004 levels. There has been little change in the number of employees surveyed who state they are aware of stress initiatives in their workplace, or reporting discussions about stress with their line managers'.

'Although upward trends were seen in Change and Managerial Support, and reported

conditions were generally positive, psychosocial working conditions for British employees have not seen improvements over the course of the surveys'.

The final report issued in February 2012 is here:

<http://www.hse.gov.uk/statistics/pdf/pwc2010.pdf>

What can UCU reps do where there are concerns

Despite concerns about the effectiveness of the HSE's approach, UCU believes that, as the officially recommended tool, we should as a minimum persuade employers to use the HSE Toolkit to ensure that:

- proper risk assessments for stress factors are undertaken,
- they meet the legal standard of 'suitable and sufficient',
- there is a transparent approach to risk assessment,
- UCU safety representatives are involved in the process in a constructively critical role.

We may need to negotiate with the employer to ensure this happens. If you don't know what your employer does to assess risk for stress factors, ask them – they must tell us. If there is evidence that the risk assessments may not meet the legal standard, the matter should be taken-up with the employer. Where we are unable to make progress to improve the situation through consultation and negotiation, then we can seek the advice and assistance of the HSE. Trade union safety reps can make a formal complaint to HSE using the special procedure and form on the HSE website. The breach of law you need to identify is "failure to conduct a suitable and sufficient risk assessment" under Regulation 3 of the Management of Health & Safety at Work Regulations 1999. For more information, and the appropriate form, see:

<http://www.hse.gov.uk/involvement/hsrepresentatives.htm>

HSE emphasises this should only be as a last resort, so if you decide to go down this road because all else has failed and you think the HSE might help, you must ensure that you have a record of a consistent effort over a period to persuade the employer to undertake or improve the quality of the assessment, and failed. To avoid being accused of going behind the employer's back, you should inform them what you intend to do if we are unable to come to a satisfactory arrangement by voluntary and co-operative means.